

Borenstein and McVeigh Law Office

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March 10, 2014

Ms. Erica Christ
Chair, Board of Directors
Whittier Alliance
10 E. 25th St.
Minneapolis, MN 55404

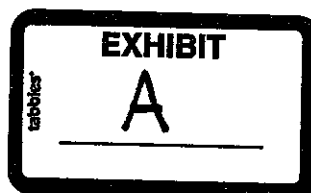
Dear Ms. Christ:

Our office has been requested by Marian Biehn, Executive Director of Whittier Alliance ("WA"), to provide legal advice regarding certain practices followed by Whittier Alliance in respect of its Board elections, including the application process for Board candidates. This letter responds to that request.

Ms. Biehn has forwarded to us a copy of the application posted by WA for those who are interested in being considered for election to a position on the Board of Directors of WA in 2014. The annual meeting at which members will elect Board members is scheduled for March 27, 2014, and the application states that candidates must submit their applications no later than noon, Friday, March 7, 2014. The application requests information about the nature of the interest of the candidate in serving on the Board; the experience/skills of the candidate that would be an asset to WA; the experience of the candidate with participating in WA activities; and other pertinent information. Above the signature line for the candidate, this statement appears: "I have read and understand the Whittier Alliance Board of Directors job description and responsibilities. I have participated in Whittier committees or volunteered for neighborhood activities on a regular basis. I give my permission to the Whittier Alliance to display this registration form at the Annual Meeting."

The candidate's application must be "verified" by WA staff; that is, staff must confirm that the applicant is a member of WA. Certain of the membership criteria are stated below the signature line of the application, e.g. residence, business ownership or property ownership in Whittier neighborhood. The Bylaws of the organization, Article III, Section 1, provide additional membership criteria: members must be 18 years of age or older; must support the aims and purposes of the corporation; and must agree to abide by its Articles of Incorporation and Bylaws.

Questions have been raised by individuals in the Whittier community whether the application process for Board positions at WA has unfairly excluded certain community members from



consideration for positions on the Board of Directors. As a result, Ms. Biehn has asked our office to opine on whether it is appropriate for WA to:

1. Require that Board candidates have participated in WA activities as a condition of eligibility for Board positions; and
2. Require that an application for Board candidacy be "verified" prior to the noon, March 7 deadline, in order to be considered by the Board at its special meeting on March 13.

As a backdrop to the specific answers to Ms. Biehn's questions, it may be helpful to review the requirements imposed on members of a Board of Directors of a Minnesota nonprofit corporation by law (Minn.Stat. Chapter 317A). As you know, Minnesota law requires that a Minnesota nonprofit corporation be governed by a Board of Directors. The Board of Directors has the legal responsibility for the management of the organization (including managing its financial and human resources, overseeing its programs and community engagement, complying with the mission of the organization as delineated in its Articles of Incorporation and Bylaws, and with regulations and laws imposed by applicable state and federal law).

Minn.Stat. Section 317.251 requires that Board members must discharge their duties **in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.** A person who performs a director's duties in line with this provision is not personally liable by reason of being a director of the corporation. The duties are commonly referred to as the:

- *Duty of Care*
- *Duty of Loyalty*
- *Duty of Obedience*

The WA Board of Directors job description informs candidates that its Board members are "legally, financially and morally" responsible for all activities of the organization. The job description then sets out categories of responsibility that correspond to the responsibilities we cite above from the Minnesota Nonprofit Corporation Act. Candidates are on notice, via the job description and the application process that WA is looking for candidates who are eligible not only by means of their ties to the Whittier neighborhood through residence or ownership of business or property, but who are also eligible because of their documented history of engagement with the organization and support for the aims and purposes of WA.

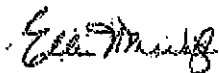
WA is acting prudently when it imposes these criteria on applicants for the Board of Directors, so as to ensure that those who are elected to be members of the Board of Directors will be able to meet a director's fiduciary duties to the corporation. It is within the scope of the WA Board's authority to set criteria that it reasonably believes will produce an informed, experienced and prudent Board to manage its affairs. As a part of these criteria, it is reasonable for a Board to require that those who want to serve as directors to show that they support the aims and purposes of the organization, and that they have an understanding of the programs and work of the organization that they seek to oversee.

The application for Board candidacy specifically requests information about the candidate's participation in WA activities, as well as other information about the nature of the candidate's interest in and preparation for a role on the Board of Directors. The job description mentions that a Board member should have "a history attending either the Business Assn. or the Community Issues meetings, helping with the Strategic Planning Task forces" as initial participation sufficient to introduce the candidate to the issues that are under consideration by WA. While the statement above the candidate's signature only states that the candidate has "participated in Whittier committees or volunteered for neighborhood activities on a regular basis," the application as a whole and the job description make clear that WA expects that Board candidates will have actively participated in WA meetings and/or task forces as a condition precedent to Board membership.

The WA Board also has the authority to set a deadline for applications, and it did so by specifying that applications must be completed and returned to the WA office by noon on March 7, 2014. Part of the application form is the "verification" by a WA staff member (at the bottom of page 2) that the candidate is a member of the organization. The Board is within its authority to delegate to its staff the responsibility to initially screen applications for membership eligibility. The Board is also within its authority to determine that, if an application has not been verified by staff by noon on March 7, 2014, the application is not complete and therefore not eligible for further consideration when the Board meets to finalize the slate of directors on March 13, 2014.

Because of the concerns expressed by some members of the community about the application process, the Board may want to consider, prior to its review of individual applications for the Board, whether the application process, including the criteria the Board has established for Board membership and its process for verifying Board eligibility, should be modified in advance of this month's membership meeting. Eve Borenstein of our office will be at your March 13, 2014 meeting to answer questions in this regard. However, in our opinion, the process followed by WA with respect to the application process for Board candidates has been within the scope of authority of the Board of Directors and in line with Minnesota law governing nonprofit corporations.

Sincerely,
BORENSTEIN AND MCVEIGH LAW OFFICE LLC



By: Ellen W. McVeigh



WHITTIER ALLIANCE
Board of Directors Candidate Registration

Please complete and return this form to the Whittier Alliance office no later than noon, Friday, March 7, 2014.

NAME _____

RESIDENCE ADDRESS _____

**WORK / BUSINESS /
PROPERTY ADDRESS** _____

PHONE () _____

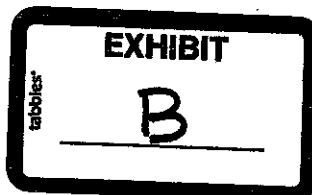
EMAIL _____

FAX () _____

**HOW LONG HAVE YOU BEEN A MEMBER
OF THE WHITTIER ALLIANCE?** _____

WHY ARE YOU INTERESTED IN SERVING ON THE BOARD OF DIRECTORS?

**WHAT EXPERIENCE/SKILLS/TALENTS DO YOU POSSESS THAT YOU FEEL WOULD BE AN ASSET TO
THE WHITTIER ALLIANCE?**



DESCRIBE HOW YOU HAVE PARTICIPATED IN THE WHITTIER ALLIANCE (volunteering, regular committee attendance, task force participation, etc.):

WHAT ELSE WOULD YOU LIKE TO TELL US ABOUT YOURSELF?

I have read and understand the Whittier Alliance Board of Directors job description and responsibilities. I have participated in Whittier committees or volunteered for neighborhood activities on a regular basis. I give my permission to the Whittier Alliance to display this registration form at the Annual Meeting.

SIGNATURE

DATE

Members of the Whittier Alliance are eligible for board positions. YOU ARE A MEMBER OF THE WHITTIER ALLIANCE IF YOU...

...are a resident of, or

...own a business in or are the appointed representative of a business in, or

...own property in ...THE WHITTIER NEIGHBORHOOD.

Whittier staff use only:

PROOF OF ELIGIBILITY HAS BEEN PROVIDED

DATE

VERIFIED BY

TYPE